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Human rights situation in Palestine and other occupied Arab territories

Joint written statement* submitted by Al-Haq, Law in the Service of Man and BADIL Resource Center for Palestinian Residency and Refugee Rights, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 May 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Seven Decades of Impunity: The United Nations Human Rights Council Must Hold Israel to Account

As Palestinians mark 70 years since the Nakba, 51 years of Israeli occupation, and 12 years of unlawful closure of the Gaza Strip, amounting to collective punishment, they also continue to face widespread silencing in international fora as part of efforts to undermine accountability and a just and lasting solution to their plight. The United Nations (UN) has long played host to Israel's silencing efforts, including through the smearing of Palestinian human rights organisations by Israel's UN ambassador,[1] Israel's denial of country visits to the occupied Palestinian territory by UN special rapporteurs,[2] and its lack of cooperation with UN mandates, including commissions of inquiry and fact-finding missions.[3] Recent efforts to remove item 7 on "the human rights situation in Palestine and other occupied Arab territories" from the agenda of the regular session of the Human Rights Council (or 'the Council'), and to prevent the public release of the database of businesses operating in and with Israeli settlements form part of a wider Israeli attempt to silence Palestinians, to deny them the realisation of their inalienable rights, and to entrench Israel's prolonged occupation of the Palestinian territory.

1. Efforts to Remove Item 7 From the Agenda of the Human Rights Council

Item 7 on "the human rights situation in Palestine and other occupied Arab territories" has been on the Human Rights Council's agenda ever since its creation in 2006, and even before when it was already a separate agenda item of the Human Rights Commission, the Council's predecessor. The maintenance of item 7 as a separate item on the Council's agenda is warranted by the unparalleled nature of Israel's prolonged occupation of Palestinian and Syrian territories since 1967 and by the need to regularly address the ongoing gross and systematic violations of international law committed therein, including the severe denials of Palestinians' right to self-determination and to permanent sovereignty over their natural wealth and resources.[4]

Yet, since March 2013 and for the past 15 sessions of the Human Rights Council, European Union (EU) Member States have effectively disengaged from participating in, and even attending, the Council session under agenda item 7, following Israeli pressure. Instead, EU Member States have undermined item 7 by addressing the human rights situation in the occupied Palestinian and Syrian territories under agenda item 4, which addresses the human rights situations requiring the Council's attention more generally.[5] More recently, efforts to entirely remove item 7 from the Council's agenda have been advanced by Israel, the United States of America,[6] and EU Member States, despite the fact that Israel's prolonged occupation continues to be entrenched with no end in sight. In doing so, Israel, the United States of America, and EU States aim to strip Palestinians of avenues of redress for the widespread and systematic violations committed against them, for which no domestic remedies exist, given Israel's longstanding and pervasive impunity.

2. Preventing the Public Release of the Database of Businesses Profiting from Israel's Settlement Enterprise

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[1] *See*, e.g., FIDH, "Open Letter to UN Secretary General Re Slandering statements against Palestinian NGOs Al-Haq and Al Mezan" (4 July 2017), available at: https://www.fidh.org/en/issues/human-rights-defenders/open-letter-to-un-secretary-general-re-slandering-statements-against.

[2] *See*, e.g., OHCHR, "Denial of access and lack of cooperation with UN bodies will not diminish scrutiny of a State's human rights record" (6 June 2017), available at: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21687.

[3] *See*, e.g., UN Human Rights Council, Report of the UN High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1, UN Doc A/HRC/31/40/Add.1, 7 March 2016, para. 50.

[4] Article 1, International Covenant on Civil and Political Rights (1966).

[5] Al-Haq, "Strengthening the European Union's Involvement at the United Nations Human Rights Council: Standing Agenda Item 7" (2 February 2016), p. 2, available at: http://www.alhaq.org/advocacy/targets/european-union/1011-strengthening-the-european-unions-involvement-at-the-united-nations-human-rights-council-standing-agenda-item-7-.

[6] *See*, e.g., U.S. Department of State, "Opposition to UN Human Rights Council Agenda Item Seven" (20 March 2017), available at: https://www.state.gov/r/pa/prs/ps/2017/03/268525.htm.

While the future of item 7 is being undermined, so are Palestinian efforts to pursue accountability within the Human Rights Council itself, including in relation to holding perpetrators of grave breaches responsible and ending corporate complicity for business enterprises prolonging and substantially profiting from Israel's occupation. On 24 March 2016, the Council adopted resolution 31/36 for the production of a database of business enterprises[7] involved in the activities identified by the report of the Council's fact-finding mission on Israeli settlements dispatched in 2012.[8] Human Rights Council resolution 31/36 further called for the database to be transmitted in the form of a report, as a human rights tool for civil society engaging with the Council.[9] On 13 February 2017, the UN High Commissioner for Human Rights recommended the deferral, of the report's consideration following pressure to undermine the accountability mechanism. Over a year later, the database is yet to be made public.

In March 2018, during the Council's latest 37th regular session, the Office of the High Commissioner for Human Rights (OHCHR) submitted its report pursuant to Council resolution 31/36, yet failed to release the database of businesses, rather limiting the report to the office's methodology in compiling the database.[10] While the report states that "OHCHR expects to provide the names of the companies engaged in listed activities in a future update",[11] there was no indication as to when such a future update will be made. Indeed, the delays and deferrals of the database's release fall within the context of increased attempts by States to undermine this tool as an effective accountability mechanism to end corporate complicity in Israel's occupation. Meanwhile, business enterprises continue to profit from Israel's unlawful settlement enterprise, stifling the Palestinian economy and livelihoods through the exploitation of Palestinian natural resources, while enjoying impunity for acts that may amount to war crimes.

3. Conclusion and Recommendations

On Friday, 18 May 2018, the Human Rights Council adopted draft resolution A/HRC/S-28/L.1 during its 28th special session on "the deteriorating human rights situation in the occupied Palestinian territory, including East Jerusalem", calling for the establishment of a commission of inquiry into the Israeli occupying forces' use of excessive force, including lethal force, against peaceful Palestinian protesters, since 30 March 2018, resulting in the injury of thousands and the killing of over a hundred Palestinians, in acts that may amount to war crimes.[12] As Israel's occupation continues to be entrenched, with corporations profiting from Israel's crimes, Israeli forces continue to violently suppress Palestinians' demands for the realisation of their right to self-determination, which includes the right of Palestinian refugees to return and permanent sovereignty over natural resources.

In this context, efforts to remove item 7 from the agenda of the Human Rights Council only serve to entrench Israel's decades-long silencing of Palestinians, while signalling a green light for the continued commission of widespread and systematic violations of international law in the occupied Palestinian territory. Accordingly, Al-Haq and BADIL call on Member States of the UN Human Rights Council to:

1. Support the maintenance of item 7 as a separate item on the agenda of the UN Human Rights Council to address the "the human rights situation in Palestine and other occupied Arab territories" until an end to Israel's

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[7] UN Human Rights Council, Resolution 31/36, UN Doc A/HRC/RES/31/36, adopted 24 March 2016.

[8] UN Human Rights Council, Report of the Independent International Fact-Finding Mission to Investigate the Implications of the Israeli Settlements on Civil, Political, Economic, Social and Cultural Rights of the Palestinian People throughout the Occupied Palestinian Territory, including East Jerusalem, 7 February 2013, A/HRC/22/63, para. 96.

[9] Al-Haq, "Palestinian Organizations Support Release of UN Database Report and Call for Third State Action to End Corporate Complicity in Occupation", available at: http://www.alhaq.org/advocacy/targets/united-nations/1178-palestinian-organizations-support-release-of-un-database-report-and-call-for-third-state-action-to-end-corporate-complicity-in-occupation.

[10] UN Human Rights Council, Database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, UN Doc A/HRC/37/39.

[11] *Ibid.* para. 26.

[12] Al-Haq, "Al-Haq Attends 28th Special Session of the UN Human Rights Council on the Situation in Palestine, Calls for Accountability" (22 May 2018), available at: http://www.alhaq.org/advocacy/targets/united-nations/1255-al-haq-attends-28th-special-session-of-the-un-human-rights-council-on-the-situation-in-palestine-calls-for-accountability.

fifty-year occupation is achieved and the rights of Palestinians, including Palestinian refugees, are fully realised in accordance with international law;

2. Support efforts to ensure accountability, including for corporate complicity in Israel's occupation, by calling for the full and public release of the database of business enterprises established pursuant to Human Rights Council resolution 31/36;

3. Support an independent and transparent investigation into all violations committed in the occupied Palestinian territory, notably in the Gaza Strip since 30 March 2018, and ensure the effectiveness of the commission of inquiry established pursuant to draft resolution A/HRC/S-28/L.1 in holding Israeli perpetrators accountable;

4. Cooperate to bring to an end Israel's prolonged occupation, ensure accountability for all violations of international human rights and humanitarian law committed in the occupied Palestinian and Syrian territories, and impose sanctions against Israel in light of its pervasive and ongoing impunity.